BRITISH COLUMBIA
POLICE
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2003
ANNUAL REPORT

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POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

The Honourable Claude Richmond
Speaker of the Legislative Assembly
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker:

It is my honour to present to you and to the members of the Legislative Assembly the 2003 Annual Report for the Office of the Police Complaint Commissioner.

This report has been prepared in accordance with section 51.1(1) of the *Police Act*.

Yours truly,

Dirk Ryneveld, Q.C.,
Police Complaint Commissioner

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* There is no Annual Report for 2002, but certain statistical information for 2002 is incorporated into this Report for 2003.

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Commissioner's Message – Restoring Public Confidence

It is my pleasure to present my first Annual Report as the new Police Complaint Commissioner for the Province of British Columbia. Due to the unfortunate and unforeseen resignation of the previous Police Complaint Commissioner in May of 2002, and the resultant consequences thereof, no Annual Report was prepared by the interim administration for the year 2002. Although the primary focus of this Annual Report is for the calendar year 2003, we have provided some very basic statistics and figures for 2002 to place the ongoing work of the Office of the Police Complaint Commissioner into perspective.

When I took office on the 13th of February, 2003, I was faced with a number of significant challenges. At the outset there were a number of files which had awaited the appointment of a new Police Complaint Commissioner that needed immediate attention. Secondly, for a variety of reasons, in addition to the Acting Police Complaint Commissioner, there was only one permanent staff member working at the office. Additionally, there were two temporary office support staff in the office. There were no investigators or investigative analysts. Thirdly, I took office with approximately a month left in the fiscal budget year with a substantial reduction in budget available for the 2003 budget year. Finally, I was advised that the lease on our office premises in Vancouver was due to expire at the end of March - then six weeks away.

Needless to say, some very significant decisions had to be made. Briefly stated, early on in my term in order to ensure that our office could effectively carry out its mandate of providing civilian oversight over the municipal police forces in the Province of British Columbia, I made the following decisions in an effort to achieve that objective:

1. In order to maximize efficiency and reduce cost, I entered into an agreement with two other Officers of the Legislature, the Ombudsman and the Freedom of Information and Protection of Privacy Commissioner to co-locate, sharing certain common facilities such as reception, boardrooms, libraries and hiring their technical support and human resource staff to look after those aspects of the operation of the Police Complaint Commissioner's Office. That decision necessitated a move of the main office to Victoria in order to take advantage of co-location opportunities. Recognizing that it was important for our office to be accessible by complainants on the lower mainland, we maintained a shared office with the Ombudsman in Vancouver as well. By making that decision, we were able to provide increased access and yet lower our operating costs.

2. I hired an experienced lawyer to act in a dual capacity as Commission Counsel and as Deputy Police Complaint Commissioner. I also hired three Investigative Analysts and two support staff so that we could tackle the work of the office as soon as possible and immediately deal with some of the backlog. One Senior Investigative Analyst, one Investigative Analyst as well as Commission Counsel and one support staff are located in our main office in Victoria, and one Senior Investigative Analyst and one support staff operate the Vancouver office.

3. I cancelled a Public Hearing and instead ordered an external re-investigation. Many of the problems encountered by the previous administration stemmed from the lack of clarity in the legislation governing our office. Part 9 of the *Police Act* was proclaimed into force effective the 1st of July, 1998. It was new and untested legislation. It provided for a unique method of providing for civilian oversight over municipal police forces with one of its main premises that police forces would be able to investigate themselves with appropriate civilian oversight provided by the Office of the Police Complaint Commissioner. Because this statute was in its infancy many of its provisions were challenged and required legal interpretation. Those challenges took a considerable amount of time to resolve as the legal issues progressed their way through the various levels of court. In addition to being time-consuming, it was expensive. One such file involved the investigation of what was colloquially referred to as the 'Riot at the Hyatt' which occurred on December 8, 1998. When I took office in February of 2003, that matter had not yet been resolved and some legal issues were en route to the Supreme Court of Canada. Upon my review of the file, I determined that it would be in public interest to cancel the public hearing that had been called by the previous Commissioner and order an external re-investigation into the file. This was necessary in my view because two key issues had not been adequately answered by the initial investigation. By canceling the public hearing and ordering the external investigation, the legal proceedings in the Supreme Court of Canada were rendered moot and additional time and taxpayers' money was saved.

The new staff of the Office of the Police Complaint Commissioner set as one of its primary objectives to regain public confidence in the police complaint process. We are dedicated to the principle of being fair and objective. We review all complaints and ensure that they are properly investigated. Where necessary, we order external investigations and in certain circumstances, order public hearings where we deem that it is in the public interest to do so. By providing experienced, consistent, and independent objective review of complaints by the public against the municipal police forces in the province, we propose to regain public confidence in the police complaint process one file and one decision at a time.

It is important that we display an even-handed balance in the performance of our duties. The process will only succeed if both the public and the police forces trust and respect that the decisions made by members of our office are impartial, fair and in the public interest.

As can be seen from the various charts and comparison statistics found in this Annual Report, the number of complaints processed by our office has been increasing every year. In 2003 our office opened 456 files and during that same period of time we processed and

closed 366 files. Many of those files are extremely complex. I propose to single out four of those cases for comment at this time.

1. *Frank Joseph Paul*

I had inherited this file which had been closed by the previous administration. It involved the death in 1998 of a New Brunswick man who after having spent time in the police jail was transported by the police to an alley in cold rainy weather while he was apparently unable to look after himself. For reasons which I have provided in my full Reasons for Decision which can be found on our web site at www.opcc.bc.ca, I felt it was necessary to re-open this file, investigate it further, and ultimately recommend to the Attorney General that he hold a public inquiry under the *Inquiry Act*. A brief excerpt of my Reasons can be found in this Annual Report and my full Reasons for Decision are available on our web site.

2. *Jeffrey Berg*

On June 24th 2003 I called for a public hearing into the death of Jeffrey Berg, a man who died while being arrested by members of the Vancouver Police on October 22nd 2000. Having determined that the investigation into his death was flawed and that the consequent decision by the Discipline Authority to the effect that no disciplinary default had been committed, I deemed it in the public interest to arrange for a public hearing.

3. *Guns 'N Roses*

I also called a public hearing into the conduct of two officers involved in an incident where on November 7th, 2002, the Guns 'N Roses concert had been cancelled. Both of those public hearings are scheduled to take place in 2004.

4. *Pivot Complaints*

I ordered an external investigation by the RCMP into a compilation of complaints against the Vancouver Police Department concerning their treatment of approximately 50 residents of the Downtown Eastside, prepared by the Pivot Society. Because of the sheer volume of complaints and the nature of the allegations, it was necessary to request the assistance of the RCMP to conduct an independent external investigation.

In brief, I have had to make some very difficult decisions over the past year. Not everyone will agree with the decisions that were made, but you have my assurance that they have all been made with the public interest at the forefront of our considerations.

Despite a reduced staff of only six members and a reduced operational budget from previous years, I am of the view that we are nevertheless providing an effective civilian oversight as contemplated by the *Oppal Report* which recommended the creation of the Police Complaint Commissioner's Office.

The Need for Immediate Amendments to the legislation:

One of the main obstacles to the effective performance of our duties lies with the inadequacies of the legislation governing our office. In my respectful view many of the

problems encountered in the past five years can be avoided by amendments to Part 9 of the *Police Act* which will clarify jurisdictional issues. Too much time, energy and scant financial resources have been spent arguing about the wording, intent and authorities provided for under the statute. One of my main objectives for 2004 will be to make strong recommendations to the Legislature to urgently make much needed amendments to the statute in order for us to effectively carry out our mandate.

Almost from the inception of the office, the police have challenged the Commissioner's authority to make certain decisions. The Hyatt case is but the first of a long series of cases where the complaint process has been delayed by legal challenges based on differing interpretations of certain sections of the statute. No criticism of the parties challenging the legislation is intended. They have the legal right to question ambiguities in the legislation. Nor am I criticizing the court process. Due process of law is important, but it is also inevitably slow and expensive. It may be trite to say that "justice delayed is justice denied", however it does not serve the complainants, the respondents or the public interest to have these matters drag on for years without resolution. What is at fault is the legislation itself. It is unclear, ambiguous, and does not provide adequate remedies to the Office of the Police Complaint Commissioner to ensure effective civilian oversight.

The Special Committee to Review the Police Complaint Process in August of 2002 made 20 primary recommendations for amendments to Part 9 of the *Police Act*, and an additional 22 supplementary recommendations. To date, those have not been acted upon by the Legislative Assembly.

In addition to the recommendations of the Special Committee, I have encountered a number of situations that highlight the need for immediate amendments to Part 9 of the *Police Act*. One of the most significant issues raised during the past year is whether the Office of the Police Complaint Commissioner (OPCC) has the right to conduct an independent investigation into a file, where it appears that the initial investigation was flawed, inadequate or misleading. If the OPCC is restricted to making decisions based solely on the investigation provided by the police, then in my view, the concept of civilian oversight is severely compromised. Closely related to that issue, but slightly different, concerns the authority of Commission Counsel to interview witnesses, conduct independent examination of forensic evidence and obtain documents and records that counsel deems necessary to adequately prepare to conduct a Public Hearing before the Adjudicator. At present, different interpretations by various parties to the proceedings has resulted in delays in the preparation for, and conduct of public hearings. An amendment clarifying the powers of both the Commissioner and of Commission counsel is urgently required.

Another concern is that under the present legislation, the only remedy that exists where the Commissioner disagrees with a ruling by the discipline authority is to call a public hearing. There is no middle ground. Not every circumstance merits the expense of calling a public hearing. By the same token, there is conduct that deserves some form of review. The alternative to calling a public hearing is merely to confirm the discipline authority's decision. That is not always appropriate. Yet, when determining what is in the public interest, factors such as time and cost, enter into the considerations. There is no alternative mechanism available under present legislation. If the Commissioner disagrees with the decision by the discipline authority to not mete out any form of discipline, the only remedy

at present is to arrange for a public hearing. That, in my view, is not always appropriate. There are situations where another mechanism other than necessarily calling a public hearing would better serve the public interest.

The *Police Act* falls under the jurisdiction of the Solicitor General. The Police Complaint Commissioner is an independent Officer of the Legislature, totally independent from any ministry. It therefore seems inappropriate that the legislation governing that office should be part of a statute administered by the Solicitor-General. In my respectful view, any amendments to the legislation should also contemplate repealing Part 9 of the *Police Act* and creating a separate statute known as the *Police Complaint Commissioner's Act.* This would be in keeping with the statutes governing the other independent officers of the Legislature such as the Ombudsman, the Freedom of Information and Protection of Privacy Commissioner, the Auditor General and others. It is important in my view that the independence of the Office of the Police Complaint Commissioner be highlighted by the enactment of a separate statute. Part of the process of restoring public confidence in the police complaint process is to remove all mistaken public perception that the office is somehow aligned with either the police or the Solicitor General's ministry.

For the above-stated and other reasons I propose to make a separate representation to the House with draft legislation incorporating recommended amendments as soon as possible.

Despite having encountered unique challenges and certain disappointments and frustrations during my first year in office, I am very optimistic for the future. At the outset, I am tremendously impressed by - and grateful for - the competent and dedicated staff who have joined me enthusiastically in our joint endeavour to provide effective civilian oversight. Secondly, I am encouraged by the generally co-operative attitude our office has experienced with most of the municipal police forces. The men and women assigned to internal investigations have for the most part embraced the concept of civilian oversight and have acted professionally in the execution of their duties. I am particularly grateful to those police agencies, including the RCMP, who have agreed to conduct external investigations from time to time where circumstances warranted.

Finally, I wish to express my view that as Canadians, and British Columbians in particular, we are exceptionally well served by our police forces. These men and women put themselves in harm's way on a daily basis to protect us. We live our lives with a sense of security that improves our quality of life. However, as in every other walk of life, there are those police officers who do not live up to the standard that society has set for them. Where we receive complaints about allegedly inappropriate police conduct, we shall ensure that those complaints are properly investigated, independently reviewed, and appropriately resolved. With anticipated amendments to the legislation anticipated in the near future, it is my strong belief and fervent hope that public confidence will be restored in the concept that our present model of civilian oversight provides effective civilian oversight over the municipal police in our Province.

Respectfully submitted,
Dirk Ryneveld, Q.C.
Police Complaint Commissioner
March 2004

Role, Mandate and Purpose

The Office of the Police Complaint Commissioner is an independent agency established under Part IX of the *Police Act* to ensure that complaints against municipal police in British Columbia are handled fairly and impartially.

Complaints concerning the conduct of sworn members of the following municipal police departments, or complaints about the policies of the department, fall within the mandate of the Office of the Police Complaint Commissioner:

- Abbotsford Police Department
- Central Saanich Police Department
- Delta Police Department
- Nelson City Police Department
- New Westminster Police Services
- Oak Bay Police Department
- Port Moody Police Department
- Saanich Police Department
- Vancouver Police Department
- Victoria Police Department
- West Vancouver Police Department

As well as the municipal police departments of British Columbia, the Office of the Police Complaint Commissioner also monitors complaints against the Stl'atl'imx Tribal Police Services and complaints involving municipal members of the multi-jurisdictional BC Organized Crime Agency (OCA).

As of January 1st, 2003, the Esquimalt Police Department was formally amalgamated with the Victoria Police Department.

The Office of the Police Complaint Commissioner provides an accessible way for the public to complain to an independent body about the conduct of any municipal police officer. The OPCC was established to ensure that the complaint process is conducted with impartiality and fairness, both to members of the public and to members of the municipal police forces.

Police Complaint Commissioner's Jurisdiction & Role

The Commissioner has statutory jurisdiction over complaints lodged against municipal police officers and tribal police officers or about the services or policies of a municipal police department or designated tribal police service.

The Police Complaint Commissioner for the Province of British Columbia does not have jurisdiction over the handling of complaints against members of the Royal Canadian Mounted Police. The RCMP has a federal Commission to handle complaints against their sworn members. Complaints received at the Office of the Police Complaint Commissioner respecting an RCMP officer are forwarded to their Commission.

The Police Complaint Commissioner oversees the handling of all Public Trust, Service or Policy, or Internal Discipline complaints.

Police Complaint Commissioner's Mandate & Powers

The *Police Act* requires the Commissioner to:

- Oversee the handling of complaints about municipal police or police services or policies.
- Receive complaints from any source.
- Maintain a record of those complaints and their dispositions.
- Compile statistical information about complaints about municipal police of police services or policies.
- Report regularly to the public about complaints, complaint dispositions, and the complaint process.
- Inform and assist the public, complainants, police officers, police boards and adjudicators with the complaint process and the handling of complaints.
- Periodically review the complaint process and make recommendations for the improvement of that process in the Annual Report.
- Establish procedures for mediation and guidelines for information resolution of Public Trust complaints.

The *Police Act* permits the Commissioner to:

- Engage in or commission research on any matter relating to the police complaint process under Part 9 of the *Police Act*.
- Make recommendations to police boards about written policies or procedures that may have been a factor that gave rise to a complaint.
- Prepare guidelines about the receiving of complaints generally.
- Make recommendations to the director of Police Services or the Attorney General that a review or audit be undertaken to assist police in developing training designed to prevent recurrence of problems revealed by the complaint process.
- Make recommendations to the Attorney General for a public inquiry under the provincial *Inquiry Act*.
- Refer a complaint to Crown Counsel for possible criminal prosecution of a police officer.

The Code of Professional Conduct

All sworn police officers in the Province of British Columbia are bound to perform their duties according to the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98. The purpose of this *Code of Professional Conduct* is to establish a code of conduct that is applicable to all police officers and to provide a guide to assist municipal police departments in delivering fair, impartial and effective police services to the communities they serve. The ultimate aim of this *Code* is to maintain the public confidence in the police by ensuring that police officers are accountable to the public in a way that is fair to both police officers and to the public, yet not unduly interfering with the ability of the police to carry out their lawful duties.

The statement of core values of the *Code of Professional Conduct* affirms that all police officers:

(a) accept the duty to act without favour or personal advantage;
(b) are committed to treating all persons or classes of persons equally, regardless of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status; and
(c) agree to uphold rights and freedoms guaranteed or protected by law.

The *Code of Professional Conduct* identifies 12 potential "disciplinary defaults". They are:

- Discreditable conduct
- Neglect of duty
- Deceit
- Improper disclosure of information
- Corrupt practice
- Abuse of authority
- Improper use and care of firearms
- Damage to police property
- Misuse of intoxicating liquor or drugs in a manner prejudicial to duty
- Conduct constituting an offence
- Being a party to a disciplinary default
- Improper off-duty conduct

The *Code* also provides guidance to Discipline Authorities as to the appropriate corrective or disciplinary measures to be imposed. If appropriate, corrective measures are preferred to purely punitive measures. The goal for everyone, the officer, the complainant, the general public and the department involved, is to ensure that the misconduct committed is not repeated or continued. Corrective measures seek to address the problem and provide training or direction to ensure that the officer understands why the particular misconduct is unacceptable and how to improve their

performance as a police officer. The Discipline Authority may impose one or more of the following measures as provided by the *Code*:

- Verbal reprimand
- Written reprimand
- Direction to undertake professional counseling
- Direction to undertake special training or re-training
- Direction to work under close supervision
- Suspension without pay for not more than 5 scheduled working days
- Transfer or re-assignment
- Reduction in rank
- Dismissal

Advice as to future conduct (managerial direction) is not a measure listed under Section 19 of the *Code of Professional Conduct Regulation*. However, the Commissioner views it as a corrective measure for the following reasons: the Discipline Authority has found that the circumstances of the complaint warrant that some form of action is needed to correct the behavior of the subject officer; a senior officer gives the subject officer advice as to future conduct; and the Discipline Authority records the complaint and the advice in the subject officer's personnel record. However, the advice is not recorded in the subject officer's Record of Discipline because it is not disciplinary action as defined in the *Code*. All other disciplinary measures are recorded in the subject officer's Record of Discipline.

The Complaint Process

Who can make a complaint?

Anyone who has concerns about the actions or comments of a municipal police officer or the service provided by a municipal police department may make a complaint.

How are complaints made?

A complaint may be made orally or in writing, but before it can be processed under the *Police Act*, it must be made in writing, on an approved form (Form 1 – Record of Complaint). After a complaint has been made, it can be withdrawn at any time.

What happens to the complaint?

The Office of the Police Complaint Commissioner forwards all complaints received to the appropriate police department for investigation. If the complaint is made at a police department, copies must be forwarded to the Office of the Police Complaint Commissioner.

The police department investigating a complaint must report to the Police Complaint Commissioner at each stage of the investigation to advise the Commissioner what is happening with the complaint. The complainant is also provided with ongoing information about his or her complaint.

Three types of complaints can be made: *Public Trust, Service or Policy,* or *Internal Discipline*. Depending on the circumstances described in the complaint, all complaints will be characterized as one of these types or as a combination of two or more categories, referred to as a *compound complaint*. Each type of complaint is processed differently.

Most complaints fall under the Public Trust category and are processed in the following manner:

Public Trust Complaints

Public Trust complaints affect the relationship between a police officer and the community and allege specific misconduct on the part of a police officer. A Public Trust complaint will be resolved in one of three ways:

1. **Informal Resolution**

   Public Trust complaint may be resolved informally by face-to-face discussions, by letter, by telephone, or with the help of a professional mediator. A complaint is resolved when both parties (the complainant and the police officer) have given their signed consent, after which either party has 10 days to withdraw his or her consent in writing. Otherwise, the informal resolution is final and binding.

2. **Summary Dismissal**

   A Public Trust complaint may be dismissed if there is no likelihood that further investigation would produce evidence to substantiate the complaint; if the complaint concerns a matter that happened more than 12 months ago; or if the complaint is deemed to be frivolous or vexatious. If the complainant disagrees with the department's decision to dismiss the complaint, he or she may apply to the Police Complaint Commissioner for a review of the police department's decision.

3. **Investigation & Conclusion**

   A Public Trust complaint will be investigated if it is not informally resolved or summarily dismissed. The complaint will be investigated by the police department involved or in some circumstances may be referred by the police department or by the Police Complaint Commissioner to another police department to investigate.

The investigation into a complaint must normally be completed within six months after the date the approved complaint form was filed. The Police Complaint Commissioner may grant an extension of this time. If the complainant is not satisfied with the results of the investigation, he or she may apply to the Police Complaint Commissioner for a Public Hearing.

Service or Policy Complaints

Service or Policy complaints are complaints about the policies, procedures and services provided by a municipal police department and affect the relationship between the police department and the community. An example of a Service or Policy complaint would be a complaint that insufficient police officers were stationed at a public event.

Service or Policy complaints are the responsibility of each police board. The police board must advise the Police Complaint Commissioner and the complainant of the results, including what course of action, if any, was taken and must provide a summary of the results of any investigation or study.

The Police Complaint Commissioner cannot require a board to take any particular course of action regarding a Service or Policy complaint, but may make recommendations to the board.

Internal Discipline Complaints

Internal Discipline complaints concern police misconduct that is of concern to the officer's employer, but does not affect the officer's relationship with the public. An example of an Internal Discipline complaint would be that a police officer did not secure his or her firearm properly in the police locker. The principles of labour law apply to the investigation and processing of Internal Discipline complaints. The Public Trust complaint process does not apply.

Public Hearings

The *Police Act* empowers the Police Complaint Commissioner to order Public Hearings into complaints.

At the conclusion of an investigation into a complaint, both the complainant and/or the respondent police officer may request a Public Hearing.

If the respondent police officer has received a disciplinary measure more severe than a verbal reprimand, he or she has an automatic right to a Public Hearing on request.

If the complainant requests a Public Hearing, the Police Complaint Commissioner must determine if there are grounds to believe the hearing is necessary in the public interest.

The Police Complaint Commissioner may also arrange a Public Hearing without having received a request from either the complainant or the respondent police officer if the Police Complaint Commissioner believes that the Public Hearing is necessary in the public interest.

The Commissioner will consider the following factors before making the decision whether to arrange a Public Hearing:

- The seriousness of the complaint.
- The seriousness of the harm done.
- Whether a Public Hearing is need to discover the truth.
- Whether there was a flaw in the investigation conducted by the police department, the measures proposed are inappropriate or inadequate, or the Discipline Authority's interpretation of the *Code of Professional Conduct* was incorrect.
- Whether a Public Hearing is necessary to restore or preserve public confidence in the police as well as the complaint process.

Once the Police Complaint Commissioner has determined that the Public Hearing is in the public interest, the Commissioner must appoint an Adjudicator to preside over the hearing. Associate Chief Justice Dohm of the Supreme Court of British Columbia nominates a retired justice of the Supreme Court or a retired judge of the Provincial Court of British Columbia. The Commissioner then appoints that individual as Adjudicator for the purposes of that particular Public Hearing.

The Commissioner appoints Commission Counsel who may at his discretion call any witness who has relevant evidence to give, whether or not the witness was interviewed during the original investigation. Commission Counsel may also introduce into evidence any record, including any record of the proceedings, concerning the complaint up to the date of the hearing.[4]

The Adjudicator must decide if the alleged disciplinary default has been proven on the "civil standard of proof", that is, *on the balance of probabilities*. If the disciplinary default is proven, the Adjudicator may impose a disciplinary or corrective measure, or may confirm, increase or reduce the disciplinary or corrective measures already proposed by the Discipline Authority.

Once a decision has been reached at the Public Hearing, the only appeal available to that decision is to the Court of Appeal on questions of law.

The rules governing Public Hearings and Office of the Police Complaint Commissioner policy regarding the ordering of a Public Hearing may be found on the OPCC website at www.opcc.bc.ca .

Public Hearings in 2003

The Police Complaint Commissioner arranged two Public Hearings in 2003. Both Public Hearings were arranged pursuant to section 60(5) of the *Police Act*, the Commissioner determining that a hearing was necessary in the public interest. These Public Hearings are scheduled to commence in 2004.

Decisions rendered by Adjudicators on concluded Public Hearings and the schedules for upcoming Public Hearings can be found on the OPCC website at www.opcc.bc.ca .

A summary of the Public Hearings called by the Police Complaint Commissioner is set out below, although only limited details of the matters may be provided as the matters remain before the respective Adjudicators.

PH2003-01
Constable David Bruce-Thomas
Vancouver Police Department

Mr Jeffrey Berg was arrested on October 22nd, 2000, when members of the Vancouver Police Department (VPD) responded to a reported home invasion in East Vancouver. In the course of the arrest by one of the members of the police, Mr Berg collapsed and stopped breathing. Although resuscitated by EHS paramedics at the scene, Mr Berg did not regain consciousness and died two days later. The cause of death was ultimately determined to be due to a traumatic aneurysm of the left carotid artery as a result of a blow to the left side of the neck.

An investigation by the VPD Major Crime Section commenced immediately. They forwarded their investigation report to both the Regional Crown Counsel and the Office of the Police Complaint Commissioner on December 3rd, 2001. On November 1st, 2002, Regional Crown Counsel concluded that based on the criminal standard of proof, criminal charges would not be appropriate.

In the interim, the sister of the deceased, Ms Julie Berg, had lodged a complaint with the Office of the Police Complaint Commissioner under the *Police Act* on November 24th, 2000, alleging that her brother died as a result of brutal and excessive force by a police officer. Ms Berg further alleged that the information received by the detectives appeared to be inconsistent. The Commissioner had suspended *Police Act* proceedings pending the completion of the review by Regional Crown Counsel. The VPD Internal Investigation Section thereafter reviewed the investigation file to determine if there

were grounds to support corrective or disciplinary actions against the respondent officer under the *Police Act*. On December 19th, 2002, the VPD Discipline Authority determined, based on the investigation report completed by the Internal Investigation section, that there was no evidence to support allegations of misconduct by the officer. Ms Berg requested the Office of the Police Complaint Commissioner to review the Discipline Authority's conclusion and order a Public Hearing.

Upon completion of the review, pursuant to section 60(5) of the *Police Act*, the Commissioner determined that the public interest required a Public Hearing into the actions of Constable Bruce-Thomas while arresting Jeffrey Berg on October 22nd, 2000. Accordingly, on June 24th, 2003, the Commissioner filed a Notice of Public Hearing, and appointed Mr. Brian Weddell, Q.C., a retired Judge of the Provincial Court of British Columbia, as the Adjudicator.

The Public Hearing is scheduled to commence in Vancouver, British Columbia, on June 10th, 2004.

PH2001-02
Constable Reginald Forster and Constable Ryan D'Onofrio
Vancouver Police Department

On October 10th, 2003 the Police Complaint Commissioner ordered a Public Hearing into the actions of two police officers during a disturbance which erupted at GM Place in Vancouver on November 7th, 2002, after the cancellation of a concert by the rock group Guns N' Roses.

The Office of the Police Complaint Commissioner received on November 13th, 2002, two separate complaints alleging excessive use of force against them by a member, or members, of the Vancouver Police Department stemming from the incident of November 7th, 2002 at GM Place in Vancouver.

On June 13th, 2003, the Vancouver Police Department provided the Office of the Police Complaint Commissioner with a report into the aforementioned complaints and concluded that the force used by two members of the police department was necessary to suppress a riot and was not excessive, considering the danger perceived if that riot continued. The Discipline Authority (the Vancouver Police Department) concluded that in light of the findings of the *Police Act* investigation, no further action was warranted.

The Office of the Police Complaint Commissioner reviewed the extensive file prepared by the Vancouver Police Department regarding this investigation and reviewed the video-footage obtained from various sources, including footage of the events leading up to the particular incidents in order to determine the scene in full context. The

Commissioner also viewed various edited video clips broadcast by television networks into the living rooms of most British Columbians. In the Police Complaint Commissioner's view, it was important to not pass judgment on the particular incidents complained of without looking at the available footage of the entire situation the Vancouver Police were confronted with that evening.

While it appears that the actions of most of the police officers involved in the dangerous situation at GM Place that evening were appropriate, in the Police Complaint Commissioner's respectful view, the actions of at least two identifiable police officers are questionable in all of the circumstances.

The video footage clearly depicts at least two separate incidents in which two officers appear to be using unnecessary and excessive force against the two complainants. It does not appear from the video footage that these particular individuals were involved in acts of hooliganism or to be resisting or disobeying the police at the time they sustained physical injuries at the hands of the police officers. Indeed, both complainants appeared to be attempting to comply with police commands to leave the area when they received blows resulting in their injuries. One officer appears to have been involved in both separate incidents.

The question as a consequence is whether in all of the circumstances, the use of force against the complainants by the respondent officers was justified. The Discipline Authority determined that such force was justified in order to suppress a riot. The Police Complaint Commissioner respectfully differs with that conclusion. In the opinion of the Commissioner, the use of force by the officers in those specific instances was both unnecessary and excessive.

Where a Police Complaint Commissioner disagrees with the conclusion of the Discipline Authority, the Commissioner cannot merely substitute his opinion for that of the Police Department. Pursuant to the *Police Act*, the only remedy available in the event of disagreement is for the Police Complaint Commissioner to arrange for a Public Hearing if the Commissioner is persuaded that a Public Hearing is necessary in the public interest.

On October 10th, 2003, the Police Complaint Commissioner decided that, pursuant to section 60(5) of the *Police Act*, a Public Hearing into the actions of Constable's Forster and D'Onofrio was required in the public interest. The Commissioner determined that a full airing of the facts surrounding police actions at GM Place on November 7th, 2002, was required to restore the public's confidence in the police, as well as the complaint process. The Commissioner appointed Mr. Ross Collver, a retired Justice of the Supreme Court of British Columbia, as the Adjudicator.

Dates for the Public Hearing into this matter are to be scheduled on March 17th, 2004, in Vancouver, British Columbia.

Commissioner's Reasons - The Frank Paul Case

In addition to ordering the aforementioned Public Hearings, the Commissioner also extensively reviewed the following historical file and recommended that the Attorney General order a Public Inquiry into the matter. The following is an excerpt of the Police Complaint Commissioner's Reasons. A full text version may be obtained on the OPPC website at www.opcc.bc.ca.

On December 6th, 1998, the body of Frank Joseph Paul was discovered in an alley in the downtown eastside of Vancouver. A postmortem examination of Mr. Paul's body determined that the cause of death was hypothermia due to or as a consequence of acute alcohol intoxication. Accelerated heat loss of the body was attributed to his rain-soaked clothing.

The discovery of Mr. Paul's body in the early morning hours of December 6th launched a chain of events with far reaching consequences. The troubling circumstances of Mr. Paul's tragic death are still, now some five years later, in need of a full public examination to determine what factors led to his death and how a similar tragedy may be avoided in the future.

Very briefly stated, Mr. Paul was in police custody on two occasions on 5 December 1998. At 10:45 hours, police attended at 404 Abbott Street as a result of a telephoned complaint and found Frank Paul in a state of intoxication in a public place. He appeared to be intoxicated, uncooperative and unsuitable to take to a detoxification centre. Police therefore arrested Mr. Paul and transported him to the police jail at 312 Main Street. On arrival at the police jail, police reported that he was unable to keep his balance so he was guided to a wall where he slid down to a seated position. Police jail video shows Mr. Paul crawling on hands and knees to the elevator door at 11:22 hours. Correctional officers assisted him with the removal of wet clothing since he was unable to accomplish that by himself. Mr. Paul spent time in the "drunk tank" while his clothing was being dried and he was sobering up. By 16:57 hours the police jail surveillance video recorded Mr. Paul emerging from the jail elevator walking upright and unassisted by anyone. At 18:06 Mr. Paul walked out of the police jail. In the interim time, he can be seen on the video putting on a sweater and an outer jacket, unassisted; being handed a cup of coffee while he sat against the wall in the wagon bay area, and speaking to police officers prior to his departure.

Approximately two hours later, at 20:18, two Vancouver police officers once again arrested Mr. Paul for being intoxicated in a public place, having found him rain-soaked, lying on his back on a vegetable stand in the 400 Block of Dunlevy Street with the temperature at about 2 degrees C. The arresting officers reported that his speech was slurred and incoherent, he was unable to sit up or walk, and was apparently unable to care for himself. The police wagon driver then attended and transported Mr. Paul to the police jail. The arresting officer had reported that Frank Paul could not stand and had to be carried and placed inside the wagon. At 20:25 hours, Mr. Paul arrived at the police jail and the jail surveillance video recorded the dragging of a motionless Frank

Paul from the police wagon into the jail elevator; a visible wet trail left behind as his rain-soaked body was dragged along the concrete floor. Over the ensuing minutes a number of individuals are noted on the video to witness Mr. Paul's physical condition. He was seen by the Sergeant on duty who determined that he did not believe that Mr. Paul was intoxicated. The Sergeant had considerable experience with Mr. Paul who was an unemployed chronic alcoholic with no fixed address who had been "a regular" for some months at the city jail for being in a state of intoxication. The Sergeant reported that Mr. Paul's condition "did not appear any different to his usual state of post-gaol stay sobriety" despite the Sergeant's observing his actual state of sobriety when Mr. Paul walked out of the jail two hours earlier.

The Sergeant was unable to confirm any residence for Mr. Paul, who had been booked in as "no fixed address" and told the wagon driver to "breach Mr. Paul out of the [downtown] area". At 20:30 hours the jail surveillance video depicts the wagon driver and a Provincial Correctional Guard dragging a still rain-soaked, motionless Frank Paul from the elevator to the police wagon along the floor of the wagon bay area. After the wagon driver delivered another intoxicated individual in the police wagon to a detox center, Mr. Paul was placed in a nearby alley. Mr. Paul's lifeless body was found at 2:41 early the next morning at that same location.

When I took office in February of 2003, the Paul file was one of the most prominent of the many files that awaited the attention of the incoming Police Complaint Commissioner. This file had been the subject of significant media attention during the term of the previous Police Complaint Commissioner and was also a major topic of discussion before the Special Committee to Review the Police Complaint Process. It has been said that the handling of this very case by both the police and the Office of the Police Complaint Commissioner (OPCC) led to a significant loss of public confidence in the police complaint process.

On January 18th, 2002, approximately two years after the Vancouver Police Department (VPD) had imposed a two day suspension on one of the officers involved for discreditable conduct and a one day suspension on the other for neglect of duty, the former Commissioner Don Morrison, communicated his decision by letter. He advised the Chief of the Vancouver Police Department that, in his view, a Public Hearing would not be the appropriate vehicle to address the issues arising from the death of Frank Joseph Paul and that no further action would be taken by the Police Complaint Commissioner. The stated reasons in that letter cited "extended delays" and "other public interest considerations". In his evidence before the Review Committee on 16 May 2003, the former Commissioner expanded on those reasons stating: "I took the position on Mr. Paul's tragic death that the province would be best served by a process that had a wider scope and a broader focus and allowed for a fuller airing than is possible at a public hearing."

Mr. Morrison wrote to the Solicitor General on 4 October 2001 recommending a province-wide review and by reply on 20 December, the Solicitor General advised Mr. Morrison that he agreed it would be timely to conduct the recommended evaluation

under section 50 of the *Police Act* and had requested the Director of Police Services to include the issue as the next high-risk item for examination in his regular audit of police agencies within the Province. On 24 March 2003 I wrote a follow-up letter to the Solicitor General requesting a status update regarding the review. On 15 May 2003 the Solicitor General replied to the effect that they had conducted a preliminary review of the issue and in April 2002 had released the Municipal Police Evaluation of Detention Facilities, but that staff had not yet had the time to undertake a full examination of the issue. To my understanding, to date the matter is still outstanding.

On September 26th, 2002, Ben H. Casson, QC, the Acting Police Complaint Commissioner, who was appointed in July 2002 following Mr. Morrison's resignation, wrote to legal counsel for the Paul family advising that he lacked jurisdiction to re-consider the decision of the former Police Complaint Commissioner to not order a Public Hearing into the death of Mr. Paul. He also concluded that the *Freedom of Information and Protection of Privacy Act* precluded a copy of the police jail video tape being provided to the Paul family. During the transition of responsibilities when I took office, Mr. Casson shared his ongoing concerns about this file with me and indicated that he had been considering an option of referring the matter to an independent, experienced person to conduct a review of the file and prepare a report on what happened to Mr. Paul.

It was pursuant to this abbreviated history of events that I, as the incoming Police Complaint Commissioner, had to make a determination as to what action would, in my view, be in the public interest.

After having reviewed the extensive file, the evidence before the Special Review Committee, and having personally viewed the police jail surveillance video depicting the last known moments in the life of Frank Paul, I concluded the family deserved to know the facts concerning Mr. Paul's death in light of conflicting reports the family had received regarding the circumstances of his death. Accordingly, on June 20th, 2003, I authorized the release of portions of the police jail surveillance video depicting Mr. Paul's arrival and departure at the Vancouver Police jail on December 5th 1998, to the family's counsel. That video subsequently found its way into the hands of the media and received wide circulation, both on television and selected images in the print media.

In the interim, in early June 2003, my office received new information concerning the circumstances of Mr. Paul's removal from cells hours prior to his death. I assigned a member of my staff, an experienced retired RCMP officer, to follow up that information by conducting an interview with an individual who had new information to provide concerning the incident. That interview also provided the office with additional leads of potential new evidence that needed to be followed up. Accordingly, on June 23rd 2003, I advised Chief Graham of the Vancouver Police Department that I had re-opened the Frank Paul file and requested access to the Major Crime Section death investigation file, the VPD Internal Section investigation file and all relevant historical arrest booking and release records associated with Frank Paul. I also requested them to identify all guards

and officers depicted in the video who had not previously been identified or interviewed.

Throughout my dealings with this tragic case I have agonized about what was the "right thing to do". Unfortunately, not only are there differing independent legal opinions about whether a Police Complaint Commissioner under Part 9 of the *Police Act* has the power to re-consider the decisions made by the previous Commissioner, but there are also other competing legal and fairness issues at play. One view is that I do not have jurisdiction to re-open a file once a previous Commissioner has made a decision. The other view is that in certain exceptional circumstances, I have the power to do so.

Unfortunately, the *Police Act* is not clear as to whether or not a Commissioner may re-open previous decisions. I have read a number of independent legal opinions on this issue with differing conclusions. I must therefore rely on my personal legal interpretation and the exercise of my discretion as to what is in the public interest. Rightly or wrongly, I have concluded that I have the discretion to re-open or re-consider a previous decision in exceptional, compelling circumstances. In my view, that power is inherent in the legislation which requires me to provide effective civilian oversight of the police. The legislature surely did not intend to provide me with a duty, responsibility or obligation without also providing me with the authority or means to carry it out.

Having said that, it must be remembered that the Acting Police Complaint Commissioner, Ben H. Casson Q.C., earlier came to a contrary conclusion having decided that he lacked jurisdiction to re-consider the decision of former Police Complaint Commissioner Don Morrison to not order a Public Hearing into the death of Frank Joseph Paul. In complete fairness, given the uncertainty in the legislation, I cannot find legal fault with Mr. Casson's conclusion. I am simply of a different view. Additionally, the Acting Commissioner did not have the same facts available to him that I do at this time. The subsequent information available to me prompting our re-investigation of certain aspects of the file persuaded me that this case falls into the category of exceptional circumstances providing compelling reasons for re-opening the file.

Once having decided to re-open the file and having conducted a thorough review, I next had to turn my mind to exercising my discretion as to whether or not it was appropriate in all the circumstances to order a Public Hearing. After careful consideration, much deliberation and a weighing of relevant factors, I have come to the reluctant conclusion that for a number of reasons it would not ultimately be in the public interest to now order a Public Hearing under the *Police Act*. In my view, the public interest would be much better served by my recommending other viable alternatives authorized by legislation to provide an open and transparent account of what happened to Mr. Paul on the 6th of December, 1998, and hopefully to prevent such tragic and unnecessary circumstances from ever occurring in the future anywhere in the Province.

There is often confusion in the media and minds of the public as to the nature of a Public Hearing. Too often the terms "Public Hearing" and "Public Inquiry" are used interchangeably. They are not interchangeable. They have both a different focus and a different scope. A Public Hearing under Part 9 of the *Police Act* is called when the Police Complaint Commissioner disagrees with the decision of the Discipline Authority (usually the Chief of Police or his designate) to dismiss a complaint, or alternatively with the type of penalty imposed on an officer who was found to have committed a disciplinary default. The focus of that Public Hearing is intended to be on the behaviour of the officer(s) and is limited in scope to a particular incident or penalty (or lack of one). The Adjudicator appointed to preside over the Public Hearing has the power to make findings of fact, decide if a disciplinary default took place, and, if so, to impose the appropriate penalty. Thus, the purpose of the Public Hearing is to deal with allegations of misconduct by a particular officer or officers, and has a potentially punitive nature to it. It is limited in scope and therefore usually cannot address concerns about systemic problems within a police force or policing in general in the Province, or general policies governing the way police practices are conducted. There are also limitations on the participation of individuals who may have evidence to give, and limitations on legal standing of certain parties during the course of the Public Hearing.

Further complicating matters is the fact that essentially for the reasons outlined earlier concerning the legal issues respecting the commissioner's power to revisit previous decisions, to now order a public hearing would undoubtedly result in legal challenges being raised in court by the police, the respondents, the police union and any other party who may be affected by my decision. Those challenges would undoubtedly be protracted, with a potential of ultimately reaching the Supreme Court of Canada, and based on my experience, could take another three years to resolve. It would not be in either the interest of the family, the complaint process or the public interest to further delay these proceedings because of legal challenges to my authority under existing legislation. In addition to the legal challenges to my authority to re-open the case, I could anticipate potential common law legal arguments of *res judicata*, issue estoppel, double jeopardy, abuse of process based on delay, and challenges under the *Canadian Charter of Rights and Freedom*.

Practically speaking, not only would the time delays be adverse to the public interest, but the cost of litigation does not warrant embarking upon such a course of conduct. The public interest includes many aspects and cost to the taxpayers as a factor cannot be overlooked as a proper consideration.

As I have stated earlier, there is another legal consideration that dictates against ordering a public hearing at this stage – one of finality and fairness. It must be remembered that although I disagree with the minimal penalty imposed by the discipline authority against the two officers involved, they did "serve their sentence" so to speak. Regardless of how inadequate I deem their one- and two-day suspensions to be for their actions, at law there has to be a reasonable finality to the complaint process under the *Police Act*. To now, approximately three years later, put them again in

jeopardy for an increased penalty under the *Police Act* that they had thought was behind them, may violate the fundamental principle of fairness, and contravene the administrative law concept that there must be some degree of finality. Unlike a Coroner's Inquest or a Public Inquiry, a Public Hearing under the *Police Act* focuses on imposing corrective measures or discipline on officers found to have committed a disciplinary default. These two police officers had already been dealt with and had their punishment imposed. Therefore, in all of the circumstances, this consideration also militates against now ordering a Public Hearing.

I am of the view that that the public interest dictates that I should recommend to the Attorney General that he order a Public Inquiry into the Paul matter, pursuant to my mandate under S.50(3)(f) of the *Police Act*.

A Public Inquiry has a much broader scope than a Public Hearing. It can *inter alia* look into the way certain police practices and policies are conducted and make recommendations for province-wide application, not just one police force. A Commissioner appointed under the *Inquiry Act* has much wider powers including the power to summon witnesses, enforce the summons and punish for contempt, and report the findings to the Lieutenant Governor in Council. By contrast, although Commission counsel conducting a Public Hearing under the *Police Act* has the power to summons certain witnesses, counsel has no power to compel the most important witnesses, i.e. the Respondent police officers, to testify.

In my respectful view, the issues in the Paul case are so serious that an inquiry is necessary in the public interest, and an Inquiry under the *Inquiry Act* at this late date is best suited to arrive at the truth and make recommendations for future conduct. Those recommendations would not necessarily be limited to the policies and practices of the Vancouver Police Department, but may have province-wide or even country-wide benefits.

It must be noted that although I have the power to arrange for a Public Hearing under the *Police Act*, I do not have the power to order a Public Inquiry under the *Police Act*. I merely have the power to recommend such a Public Inquiry to the Attorney General if, in my view, the preconditions listed above are present. In my respectful view, this is the preferred option for resolving this outstanding issue.

For all of the above reasons, I have reluctantly concluded that although I have deemed it in the public interest to re-open the file and have it further investigated, that it would in all of the circumstances not be in the public interest for me at this late date to order a Public Hearing under the provisions of the *Police Act*.

Instead, I have concluded that it is much more likely that the public interest would be best served by providing the Attorney General with the results of our investigation for his consideration. For the reasons given, a full Public Inquiry under the *Inquiry* Act is preferable and recommended.

Complaint Dispositions

The Police Complaint Commissioner is required by section 50 of the *Police Act* to regularly prepare reports of the complaint dispositions made or reached during the reporting period.

The following are summaries of but a few of the complaints that were concluded during the period from January 1st, 2003 to December 31st, 2003. Complaints may be concluded in a variety of ways and the following is intended to provide a representative sample of those dispositions, from informal resolutions and summary dismissals through to those involving disciplinary actions.

As noted earlier, possible corrective or disciplinary measures range from advice as to future conduct (managerial direction), verbal or written reprimands, suspensions for up to five days with or without pay, or dismissal from the police department. Only disciplinary measures are recorded in the subject officer's Record of Discipline.

With the exception of those cases that proceeded to Public Hearing, the disciplinary or corrective measures imposed reflect decisions made by the individual police department that employs the Respondent officer.

File No. OPCC 1557
Default: Abuse of Authority

This incident involves a group of protestors forcing their way into and occupying the office of a local MLA. The police department received a call about the incident and members of the Primary Response Patrol Division attended the complaint. In taking control of the office, it was alleged that one or more of the protestors had assaulted staff and physically forced staff out of the office to facilitate the occupation. During this incident *Oleoresin Capsicum* (pepper) spray was utilized on four protestors that were obstructing the departure of the police vehicles. The complainant in this matter, who was later regarded as a third-party complainant with respect to the Public Trust aspects of the complaint, felt that the police overreacted to what was an act of non-violent civil disobedience. This complainant was characterized as a **Compound Complaint** because it had elements of both **Public Trust** and **Service or Policy** in the allegations.

The Discipline Authority after completing a full investigation into this matter, including taking statements from MLA constituency assistants and several citizens, ruled that the complaint with respect to the ***Public Trust*** *component was* ***unsubstantiated*** *and no action would be taken against any of the officers on duty at the demonstration in the MLA's office.*

*With respect to the **Service and Policy** components of the complaint that the officers in riot gear were not readily identifiable, the Discipline Authority updated the policy AC70 "Uniforms and Civilian Dress", including Crowd Management Unit Uniforms in Section 3.3 "Special Uniform Clothing."*

The Discipline Authority also recommended that for clarification purposes, the department update policy AC70, Point 5, Section 3.6 to include the necessity of "special uniforms" requiring identification numbers (or name) affixed to the uniform, or in special cases, another visible location, i.e. front of helmet. If it is not possible to place tags on CMU uniforms, then identification numbers should be placed on the front of the CMU helmets.

The Office of the Police Complaint Commissioner confirmed the rulings of the Discipline Authority and also sent a written reminder to the department of their requirements as outlined in policy OH20 on the Use of Force, that when Oleoresin Capsicum is utilized, an OC Spray usage form must be completed in detail immediately after each use. Such a form was not completed in this particular case.

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File No. OPCC 1312
Default: Improper Off-Duty Conduct

The allegations arose from the officer's involvement in a single motor vehicle accident while he was off-duty. No injuries were sustained by the officer, but the officer was criminally charged with impaired driving.

The Internal Investigation Section monitored the criminal court proceedings up to conclusion. The officer was acquitted at trial as a witness nurse had left Canada and was not available to provide evidence. The complaint was characterized as an **Internal Discipline** complaint.

*The Discipline Authority found that improper off-duty conduct, characterized as Internal Discipline, was **substantiated** in relation to the officer's conduct. **Corrective measures** were issued. The officer was advised that the police department would adopt a favourable position for dismissal of the officer should further behavior be exhibited which constituted an offence under the Police Act, Criminal Code, Labour Code or department policy. The officer was also ordered to the department's human resources section and to participate in any assistant programs or treatment plans recommended.*

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File No. OPCC 1324
Default: Abuse of Authority

The complainant was found on a public street where the officer came upon him and requested that he leave the area. The complainant did not like the way the officer was treating him and responded by throwing his water bottle at the officer. The officer then proceeded to spray the complainant with Capsicum Spray (OC). The complaint was characterized as **Public Trust**.

*The Discipline Authority found that a default of **abuse of authority** was **substantiated** in relation to the officer's handling of the situation. The officer received **managerial advice** for failing to comply with the department's policies as to the deployment of OC spray with respect to this particular matter.*

File No. OPCC 1840
Default: Neglect of Duty

The officer failed to promptly and diligently obey a lawful order of a supervisor as set out in memos provided to that officer. Specifically, the officer was requested to provide a statement relating to allegations made against another officer. The officer did not provide the said statements. This complaint was characterized as an **Internal Discipline** complaint.

*The Discipline Authority found that one count of **neglect of duty** was **substantiated** in relation to the officer failing to provide a statement as requested by his supervisor. The officer was disciplined and received a **three-day suspension without pay**, also the officer was given **corrective measures** in the form of advice as to future conduct.*

File No. OPCC 1633
Default: Discreditable Conduct

While on duty, returning from Ontario on an Air Transat flight, an officer threatened to sue the company and captain for the manner in which he was being treated. The officer voiced his displeasure for having to relinquish his ammunition to the cargo hold during the flight and that a local police agency in Ontario had been contacted to confirm his identity as a police officer. Witnesses on the plane felt the officer behaved in an unprofessional and intimidating manner. This complaint was characterized as a **Public Trust** complaint.

*The Discipline Authority found that the evidence did **not substantiate** an allegation of **Discreditable Conduct** with respect to the altercation that took place with the captain of Air Transat. With respect to the allegation that the officer displayed unprofessional and intimidating behavior inside the aircraft, the Discipline Authority found there was sufficient evidence to **substantiate** the disciplinary default of **Discreditable Conduct**. The officer was given **disciplinary measures** in the form of a **written reprimand**.*

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File No. OPCC 2101
Default: Neglect of Duty

It was alleged that the officer committed a disciplinary default contrary to section 4(1)(b) of the Code of Professional Conduct Regulation in that he failed to attend traffic court in relation to a violation ticket when he was required to do so. This complaint was characterized as a **Public Trust** complaint.

*The Discipline Authority conducted an investigation into this matter and determined that the disciplinary default of **neglect of duty** had been **substantiated**, but **no corrective or disciplinary measures** would be imposed since the officer had accepted responsibility for missing court.*

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File No. OPCC 2021
Default: Discreditable Conduct

The complainant in this matter was driving on a highway in the lower mainland. When he passed a police van parked on the side of the road, the van door opened scaring the complainant, who in turn honked his horn. The van then pulled out onto the road and with its lights flashing, the police van pulled the complainant over for speeding. The officer in the van gathered the pertinent driver's licence and registration information. The complainant apologized for honking his horn at the police van, and he explained how he was startled and thought it dangerous when the van door opened. The complainant then enquired as to why he was receiving a traffic ticket because he was not speeding. The complainant alleged that the officer raised his voice at him and did not listen to the complainant's reasons as to why he felt he was not speeding. The officer gave the complainant a traffic ticket and left the scene. The complainant and his wife were emotionally distraught over this incident.

Later when the complainant requested the particulars from the officer, because he planned to dispute his ticket in court, the officer was not very forthcoming in forwarding the particulars to the complainant. The complainant filed a Form 1 at the Office of the Police Complaint Commissioner. Contained in the complainant's Form 1 was a request that this matter be informally resolved. This complaint was characterized as a **Public Trust** complaint.

The Discipline Authority in this matter reviewed the complaint and the complainant's request to ***informally resolve*** *the complaint. An informal resolution meeting was arranged resulting in a Consent Letter being signed by both the complainant and the respondent officer.*

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File No. OPCC 1604
Default: Neglect of Duty

The Internal Investigation Section commenced an investigation into a matter involving Officer A making a formal complaint in bad faith and in retaliation of Officer B reporting on Officer A's conduct with respect to another complaint involving Officer A. This complaint was characterized as an **Internal Discipline** complaint.

The Discipline Authority found that Officer A had committed the disciplinary default of ***neglect of duty****. No recommendations with respect to discipline were made as the Discipline Authority felt that discipline was not working and other options needed to be considered. As a result of this proven default and Officer A's previous performance history, it was agreed upon by all parties involved that* ***Officer A sign a "Last Chance Agreement"****. If* ***Officer A should incur any future breaches of discipline resulting in anything above Managerial Direction, Officer A would be terminated****.*

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File No. OPCC 1605
Default: Improper Off Duty Conduct

While off duty the police officer attended a platoon party. When the officer left the party, he drove home and was involved in a traffic stop. The officer was detained for an impaired driving investigation. He provided two breath samples resulting in readings of .16. A *Criminal Code* charge of impaired driving was laid with respect to this officer, and the *Police Act* investigation was suspended until the conclusion of the criminal

proceedings. A stay of proceedings was ordered by the Crown with respect to the impaired driving charge and the officer pled guilty to driving without due care and attention. The officer was fined $600.00. Once the criminal proceedings had concluded, the *Police Act* investigation resumed. This complaint was characterized as a **Public Trust** complaint.

The Discipline Authority found that the default of ***Improper Off Duty Conduct*** *had been* ***substantiated****. The officer's actions of driving while under the influence of alcohol, and then making the comment that he was a police member when he was detained, were found to be unacceptable. Throughout the Police Act investigation the officer was cooperative with the investigating officers, apologetic and he accepted responsibility for what had occurred. The officer received a* ***one-day suspension without*** *pay as a disciplinary measure.*

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File No. OPCC 1854
Default: Neglect of Duty

While on duty three officers attended the complainant's residence after receiving a call from the complainant's sister who had concerns about her brother's welfare. The officers attended the residence and after numerous requests, the complainant refused to let the police gain access to his home. Emergency Mental Health Service workers were called to the scene and still the complainant refused to let the police gain access. Concerned about the complainant's behavior and well being, one of the officers kicked in the door, causing damage to the doorframe and rendering the door insecure. The complainant was arrested under Section 28 of the *Mental Health Act* and two of the police officers escorted the complainant to the hospital. Although conversations did take place with roommates of the complainant about watching over the complainant's belongings, no efforts were made by the police to physically secure the door. The complainant was in hospital for two weeks and during that time some of his personal property had been stolen. This complaint was characterized as a **Public Trust** complaint.

In relation to the two officers, the allegation of ***neglect of duty*** *had not been proven since as the situation unfolded, and different officers took on different roles, these two officers accepted the role of transporting the complainant to the hospital. The allegation with respect to the third officer had been proven, as he was the supervisor at the scene and took control of the situation in terms of assigning duties. The responsibility to ensure the door was secure lay with that supervising officer. The Discipline Authority found that the officer did not follow the correct policy as per the Operational Manual. The Discipline Authority found that the default of* ***neglect of duty***

had been committed with respect to the supervising officer, however that ***no disciplinary or corrective measures were warranted****.*

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File No. OPCC 1985
Default: Discreditable Conduct

Due to performance and behavioral characteristics, a Police Service dog became unsatisfactory for police service. A search was commenced to find a purchaser and eventually a potential purchaser was found with a local search and rescue team. When the potential purchaser attended the police department, it is alleged that the police officer who was the dog's handler behaved in an unprofessional and inappropriate manner by being rude, uncooperative and refusing to demonstrate the dog or provide much information relating to its handling. The behavior of the officer made it difficult for the potential purchaser to assess the dog's full capabilities. The dog was allowed to stay with the potential purchaser for a trial period. After three days, the purchaser did purchase the dog. This complaint was characterized as a **Public Trust** complaint.

The Discipline Authority determined that the allegation of ***discreditable conduct*** *had been* ***substantiated*** *with respect to the officer in that he had acted in a rude and unprofessional manner in his dealings with a member of the public. The officer had already entered into an informal arrangement with another officer for the purchase of the dog, hence his hostile behavior was an attempt to dissuade the potential purchasers. The officer did take responsibility for his actions. He acknowledged that he had behaved rudely and unprofessionally. He apologized for his behavior and vowed that he would not behave like that again. The Discipline Authority determined that* ***disciplinary or corrective measures was not warranted,*** *although the officer was advised to be more diligent in his note keeping with regards to his canine training logs.*

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File No. OPCC 1624
Default: Discreditable Conduct; Improper Disclosure of Information; Improper Off-Duty Conduct

It is alleged that the respondent officer took his service firearm on a camping trip and used it inappropriately in the presence of his children. Also, it is alleged that the officer had earlier used the Canadian Police Information Centre (CPIC) to enquire about information respecting an individual for his own personal purposes, and that he had made statements to individuals he knew about the information he had obtained. A

Police Act investigation was commenced, as well as an RCMP criminal investigation. These complaints were characterized as **Public Trust** complaints.

The investigation into this complaint was suspended pending the RCMP criminal investigation. Once the Deputy Regional Crown Counsel advised that no criminal charges were to proceed, the Police Act investigation continued. A final investigation report was submitted to the Office of the Police Complaint Commissioner.

With respect to the first allegation of ***discreditable conduct****, the respondent officer was not authorized to carry his firearm while off duty. The Discipline Authority found the evidence* ***substantiated the disciplinary default of discreditable conduct****.*

With respect to the second allegation of ***Improper Disclosure of Information****, the officer acknowledged that he queried CPIC for personal reasons and then discussed aspects of the information he obtained with other individuals. This allegation pertains to the integrity of police information. The policing community regards allegations of this nature very seriously. The Discipline Authority felt that the officer's actions reflected poorly on himself and the organization. The Discipline Authority felt that the evidence presented supported the* ***disciplinary default of improper disclosure of information****.*

With respect to the last allegation respecting the improper handling of his firearm, the Discipline Authority felt that there was no evidence to support this allegation. The Discipline Authority acknowledged that although the officer did have his firearm with him, all the evidence indicated that the firearm was properly secured and not used in an improper manner. Hence, the Discipline Authority ruled that with respect to the third ***disciplinary default of improper off duty conduct, this allegation was unsubstantiated****.*

A pre-hearing conference *was held to determine the extent of the* ***disciplinary or corrective measures.*** *The officer received a* ***written reprimand with respect to the first disciplinary default of discreditable conduct. With respect to the second disciplinary default of improper disclosure of information, the officer received a one-day suspension without pay. The third allegation of improper off duty conduct was unsubstantiated****.*

File No. OPCC 1809
Default: Improper Off Duty Conduct (x2)

The officer involved had been involved in a relationship that had recently been terminated. The officer continued to persistently page, telephone and leave messages with his ex-girlfriend even after her requests for him to stop. The officer did not cease the harassing phone calls and the officer at one point parked his unmarked leased police

vehicle in an alley across the from his ex-girlfriend's residence. The officer left gifts for his ex-girlfriend and still tried to contact her. The ex-girlfriend did not want to follow through with criminal action as she felt confident that the police department could handle the situation. The police department advised the officer of the complaint and ordered him to cease contact with his ex-girlfriend. The Chief Constable requested from the Police Complaint Commissioner an Order for an Investigation, which was granted, and this complaint was characterized as a **Public Trust** complaint.

An investigation was initiated by the department with respect to this complaint. The Discipline Authority found that after reviewing the information obtained from the complainant, two witnesses and the officer, there was sufficient evidence to ***substantiate*** *the default of* ***improper off duty conduct****. At a pre-hearing conference the officer admitted the disciplinary default of* ***improper off-duty conduct*** *and accepted the disciplinary measures of a* ***written reprimand*** *and a* ***one-day suspension without pay.***

File No. OPCC 2062
Default: Discreditable Conduct

The police officer in this matter had arrested a young female for being in a state of intoxication in a public place. During the "booking in" process at the department cells, the officer took a picture using the individual's disposable camera. The gaol matron, without her consent, had been included in the photograph, and objected to her picture being taken. The officer then disposed of the disposable camera not realizing that the camera contained personal family photographs of the individual being detained in cells. The individual after being released inquired about her camera but was advised that it had been destroyed.

The woman's lawyer contacted the police officer and his supervisor in an attempt to informally resolve the matter involving the loss of camera and family photographs. However, after several months of discussion, there was no resolution of this matter. The Chief Constable of the department then ordered an investigation into the incident. This complaint was characterized as a **Public Trust** complaint.

The Discipline Authority confirmed that the police officer had destroyed the disposable camera containing the family photographs; hence the default of ***discreditable conduct*** *had been* ***substantiated****. The Discipline Authority ordered the officer receive a* ***verbal and written reprimand*** *for his actions. Further, the Discipline Authority along with the Chief Constable recommended that the individual be compensated for the camera, shipping costs and processing of the film.*

File No. OPCC 1977
Default: Abuse of Authority

The complainant alleged that a police officer was arrogant, impolite and abused his authority while dealing with the complainant in relation to an Animal Control By-law investigation into her two dogs running at large on a public beach that is designated as an area where dogs must be kept on a leash. The complaint was characterized as **Public Trust.**

A preliminary investigation into the complaint revealed that the officer was responding to a citizen complaint about the dogs running at large on a public beach where small children were playing. The officer was properly engaged in the execution of his legal duties, and witnesses to the incident indicate that the officer conducted himself professionally and in an appropriate manner.

The Discipline Authority determined that the officer was acting appropriately and within the legal execution of his duties. There was no evidence that further investigation would produced evidence of ***Abuse of Authority*** *and* ***summarily dismissed*** *the complaint.*

. . . . . .

File No. OPCC 1447
Default: Discreditable Conduct

The police department in this regard received a complaint from a civilian employee in a specialized section with respect to complaints she had involving her supervisor, who was a police sergeant. The complainant alleged that following a series of inappropriate remarks uttered to her by this officer, that a more serious incident did occur. While on duty, the police sergeant and the complainant attended a restaurant. The complainant alleges that while alone with the sergeant in a vehicle, the sergeant made unwanted verbal statements of a sexual nature, and then attempted to guide the complainant into performing fellatio and masturbation. When the complainant refused her supervisor's advances, the supervisor repeatedly raised his voice at the complainant and then masturbated in the complainant's presence. The supervisor then cautioned the complainant about reporting what had happened, making reference to her employment and his career.
The Human Resources Section as well as the Internal Investigation Section both conducted an investigation into these allegations, and a criminal investigation was also commenced. This complaint was characterized as a **Public Trust** complaint.

The department forwarded a report to the Crown Counsel Office but after reviewing the report, the Regional Crown Counsel made the decision not to lay charges. Issues were

raised with respect to the complainant having some personal problems, which the Regional Crown Counsel considered relevant in terms of her credibility. The allegations of sexual misconduct against the sergeant were based on statements provided by the complainant since there were no eyewitnesses to the event.

The investigation also determined that the complainant had approached the sergeant, who was on duty, seeking his assistance with respect to a personal problem. The sergeant should have taken the complainant to an office or an interview room within the police building, or referred her to the Human Resources Section or an employee assistance program. Instead, the sergeant took the complainant to an area of the department considered to be a non-work site and served her an alcoholic beverage. He then took her to a pub, where he states more alcoholic beverages were consumed. If the sergeant's version of events is to be accepted, the complainant made sexual overtures toward him.

The Discipline Authority found that based on the evidence the sergeant committed the disciplinary default of ***discreditable conduct****. The discreditable conduct included, but was not limited to being a person in authority and on-duty, the sergeant provided alcohol to another on-duty employee under his supervision on police premises. The sergeant also committed the disciplinary default of discreditable conduct in that being a person in authority and on-duty, provided alcohol to another on-duty employee under his supervision at a restaurant. He also failed to properly address the well being of an employee under his supervision. A disciplinary hearing with respect to the imposition of disciplinary or corrective measures into the officer's behavior was held.*

During the Discipline Hearing the sergeant received ***disciplinary or corrective measures*** *in the form of being* ***transferred from the specialized position*** *he had previously held. The transfer would be in effect for six months, wherein after six months he could apply to the Chief Constable for a review. The sergeant had just recently been promoted to the rank of sergeant and he had served approximately seven weeks of his probationary period at this rank. His* ***probationary period would be extended to twelve months****. The sergeant received a* ***verbal reprimand*** *for facilitating the consumption of alcohol during the course of the complainant's workday.*

The complainant did not agree with the conclusion of the investigation and disciplinary or corrective measures handed down to the officer. She exercised her right for a file review with a request to the Police Complaint Commissioner for a public hearing. After reviewing the file, the Investigative Report submitted by the department and the complainant's reasons for requesting a public hearing, the Acting Police Complaint Commissioner was not persuaded that a Public Hearing would be in the public interest in the circumstances. ***The complainant's request for a public hearing was refused****.*

File No. OPCC 1646
Default: Neglect of Duty

After receiving a call from an RCMP police officer inquiring about the status of a municipal police department file which involved an allegation of an accused threatening his sister, the police department Record Clerk located the file and found two statements that had apparently not been followed-up on. Contained in the statements were detailed threats to kill/mutilate the victim and to kill her family members as well as a detailed threat to kill a police officer. The Record Clerk brought the file to the attention of the Deputy Chief Constable, who, reviewed the file then assigned it to a Detective Constable to determine why no follow-up was done on the victim's complaint. As a result of a fuller investigation being completed, a Report to Crown Counsel was forwarded to Crown Counsel and three charges of uttering threats and one count of criminal harassment were laid.

A Form 1 Record of Complaint under the *Police Act* against the original investigating officer for **neglect of duty** and failure to ensure that a proper investigation was conducted. This complaint was characterized as a **Public Trust** complaint.

After an investigation was completed into the handling of these statements and the cassette tape, the Discipline Authority determined that the officer did nothing proactive with these statements, despite the fact that there were threats of serious bodily harm and death threats, and threats to kill a police officer. After he received these statements, he was content just to forward them to the Records Department, and then go off-duty without making any effort for another officer to do follow-up, or forward the matter to another section for investigation. The Discipline Authority concluded that the ***disciplinary default of neglect of duty had been proven.*** *The officer had failed to meet his obligations as a police officer and ensure that an investigation was properly carried out when the matter/file in question changed from one of an information file to a Criminal Code investigation.*

Due to the fact that the officer who was the subject of this investigation had left the police department, the Acting Police Complaint Commissioner directed that the investigation still be completed and recommendations be made and noted on file. As of the writing of the final investigation report the police officer was no longer employed by the department. If he were still a member, the Discipline Authority would recommend that a ***written reprimand be imposed on this member****.*

File No. OPCC 1521
Default: Discreditable Conduct

A police department instigated an investigation into the conduct of one of their police officers relating to an allegation that the police officer improperly recorded his hours of

work while seconded for approximately three years to a specialized unit. This complaint was characterized as an **Internal Discipline Complaint**.

Following an investigation, the Discipline Authority determined that the officer should have been more diligent in recordings his hours of work and documenting why he needed additional time, considering several hours were reported but not accounted for. The Discipline Authority recognized that due to the infrastructure of this specialized unit, the unit depended heavily on individual officers to keep track of his or her own time. During the time of this incident, there were no measures in place to ensure that time worked was recorded. Steps have since been taken to remedy this situation. However, even though the Discipline Authority recognized that due to the passage of time, it would be difficult for the officer to account for and report the reasons why extra hours were recorded, the Discipline Authority was still dissatisfied with the officer's lack of explanation for some of the time recorded—hence the importance of keeping accurate records.

The Discipline Authority agreed with the investigating officer's conclusion that although the officer ***had not committed a default*** *under the Police Act Code of Professional Conduct Regulation, his lack of record keeping, and the manner in which he changed his hours for different duties, could give the appearance that he was taking advantage of the lack of supervision. As a result, even though there was no disciplinary default found, the officer was* ***advised to keep accurate records of overtime and reasons for shift changes****. He also* ***received advice to obtain prior approval before incurring any overtime or any other additional time****.*

File No. OPCC 1929
Default: Abuse of Authority

The complainant alleged that the officer involved was driving over the posted speed limit and not coming to complete stops while the complainant and his friend were passengers in the police car. This complaint was characterized as a **Public Trust** complaint.

The investigator assigned the file found that the complainant had recently been issued a 24-hour license suspension by the officer in question. The complainant attended at the station the next day to argue the suspension and have it revoked. Once the officer on duty explained he was unable to revoke the suspension, the complainant then lodged the above-noted complaint against the officer who had suspended his license. A friend of the complainant, who was present in the vehicle at the time, refused to provide a statement. The complainant refused any attempt at informally resolving this complaint if his suspension was not first revoked.

The Discipline Authority after reviewing the investigation concluded that the complainant's motive in lodging the complaint against the officer was in retaliation for receiving the 24-hour driving suspension. The complaint was ***summarily dismissed*** *as frivolous and vexatious.*

. . . . . .

File No. 1430
Default: Improper Off Duty Conduct (x2)

The officer in this matter was given a direct order not to take and/or use an unmarked police vehicle for his personal use while off-duty without explicit authorization from his supervisor. A few months later while off-duty, the officer was invited to a party involving a number of police members. The officer had consumed alcohol at this party and later drove in an unauthorized police vehicle to a local restaurant with his two children as passengers. Others officers arrived at the restaurant and the officer in question was approached by an on-duty colleague. A conversation ensued between the two officers, and the officer in question became aggressive and began using profanity. Finally the officer agreed to return to the department. The Professional Standards Section directed by the Discipline Authority commenced an investigation into the circumstances. This complaint is characterized as a **Public Trust** complaint.

After conducting a thorough investigation and interviewing a number of witnesses, the Discipline Authority found that there was enough evidence to ***substantiate*** *the discipline default of* ***improper off duty conduct****. The evidence clearly showed that the officer had taken a police vehicle when not authorized to use the vehicle and that he was under the influences of alcohol and that his children were unauthorized passengers in the vehicle.*

The Discipline Authority also found that there was clear and straightforward evidence ***substantiating*** *the* ***second disciplinary default of improper off-duty conduct*** *on the part of the officer using profanity toward his supervisor and two other police officers. A disciplinary hearing conference was held and the officer was given a* ***three day suspension without pay; direction to attend and undertake professional medical counseling/assessment to determine if he suffered from alcohol abuse and if so, agree to attend a treatment centre and undertake alcoholism treatment; and finally medical/counseling reports were to be submitted to the Chief Constable for the duration of the counseling sessions****.*

. . . . . .

File No. OPCC 2016
Default: Neglect of Duty

As a result of a dispute with his neighbour, the complainant was arrested by two officers for possession of a weapon dangerous to the public peace. The complainant was released later that day on a Promise to Appear. Prior to his Court date, the complainant attempted to obtain his particulars from Crown Counsel, but was advised by Crown Counsel staff that a file had not been received from the police department. The Complainant then attended Court as per his Promise to Appear, but the matter was not on the Court list. He then attended at the Crown office to determine the status of his file. Crown staff advised him that the file had yet to be processed and that he would be contacted with a new Court date. One of the respondent officers called the complainant later that day to advise him that they were still going ahead with the charges and that he would be contacted later. As of a year later, the complainant had not been contacted and he attended at the Crown office where he was advised that the charges had not been approved and the file was now concluded. The complainant then attended the police station to complain about the handling of his file. This complaint was characterized as a **Public Trust** complaint.

The Discipline Authority made the determination after reviewing the Report to Crown Counsel submitted by the officer, the JUSTIN database entries regarding this file, and after polling the opinion of the Charge Approval Crown Counsel, that there was no reasonable likelihood that further investigation of this complaint would produce evidence of a ***Public Trust*** *default, and therefore the Discipline Authority* ***summarily dismissed*** *the complaint. It was not the respondent officer's responsibility to determine whether or not the charge involving the complainant would be approved for his first appearance date. It appears that it was a clerical omission by the Crown that the file was not properly entered into JUSTIN, thereby leaving both Court Registry staff and the police department unaware of the file status.*

File No. OPCC 1738
Defaults: Corrupt Practice

The officer in this matter and his friend attended a hotel in the lower mainland. The friend was involved in an ownership dispute with respect to a number of amusement and vending machines, some of which were located in the pub of this hotel. The complainant alleged that the officer, while on duty and in uniform, made enquiries on behalf of his friend into the ownership of the amusement and vending machines on the premises of the pub. At another date the complainant in this matter also alleged that the officer attended at the pub with his friend and assisted in the removal of the lock on several vending machines and removed monies. This complaint was characterized as a **Public Trust** complaint.

The internal investigation section of this police department conducted a thorough investigation into this complaint. The Investigation Report concluded that the officer involved did violate the BC Police Act's Code of Professional Conduct. The disciplinary default of ***corrupt practices*** *was* ***substantiated****. The officer received* ***corrective measures*** *in the form of a* ***verbal reprimand****. The officer admitted to identifying himself as a police officer when he attended the pub, but he denied that it was intended to suggest that he was on duty. The officer acknowledged in hindsight that he should not have done this.*

. . . . . .

File No. OPCC 1756
Defaults: Neglect of Duty

It is alleged that two officers committed the disciplinary default of **neglect of duty** with respect to failing to return the telephone calls of the complainant. The investigation determined that the officers did attend the complainant's residence where it was alleged that the complainant's neighbour had made threats against the complainant. When the complainant later telephoned one of the officers inquiring about his file and requesting an incident number, the officer failed to return the complainant's phone calls. The department upholds that it is the duty of the officer to return a person's enquiries in a timely manner. This complaint was characterized as **Public Trust**.

Following an investigation, the Discipline Authority determined that with respect to the one respondent officer, the allegation of ***neglect of duty*** *was* ***unsubstantiated.*** *The Discipline Authority further concluded that there was enough evidence to* ***substantiate*** *the allegation that the other officer committed the disciplinary default of* ***neglect of duty*** *in that he did not return the complainant's telephone call. The Discipline Authority instructed another senior member of the department to review the investigation with the officer to ensure that the officer understood the impact of his lapse in returning the complainant's phone calls. Hence, the officer was given* ***corrective measures*** *in the form of* ***advice as to future conduct****.*

. . . . . .

File No. OPCC 1901
Default: Abuse of Authority

The Complainant alleged that as he was riding his bicycle in the early morning hours he was stopped by two police officers. When he didn't produce his identification fast enough, the officers "jumped" him and pushed him to the ground with the assistance of

four or five other officers who had just arrived. Once they had the complainant on the ground, the officers forced his face into the ground and pepper sprayed him. Later while at the police station, the complainant alleged that he was refused a phone call and the opportunity to undergo a breathalyzer test. The complainant was released with no charges. This complaint was characterized as a **Public Trust** complaint.

The preliminary investigation determined that the police officers had stopped the complainant initially for riding a bicycle without a helmet, as well as riding erratically causing the officers to believe he may have been intoxicated. Once stopped, alcohol was noted on the complainant's breath and the officers decided to arrest him for being in a state of intoxication in a public place. The complainant began to physically resist when the officers attempted to arrest him. The complainant still continued to struggle. One officer deployed pepper spray in an attempt to subdue the complainant but to no effect. At that point, three additional officers arrived and assisted in placing the complainant on the ground and handcuffing him. Once in cells, Provincial Ambulance personnel were called to attend to the complainant's injuries which appeared to be an abrasion on his cheek. The complainant indicated that he had other medical concerns, but refused to elaborate. The complainant refused treatment, insisting on being examined by a doctor. The complainant was transported to the hospital where the on-call Emergency Room Physician, after several attempts, refused to treat him due to his abusive antics. The complainant was then transported back to cells where he was lodged for being in a state of intoxication in a public place and released several hours later.

The Discipline Authority concluded that the officers were acting in the legal execution of their duties by placing the complainant under arrest for being intoxicated in a public place and in the circumstances conducted themselves appropriately while affecting the arrest. The officers arranged for medical treatment for the complainant upon request. As the complainant was arrested for being in a state of intoxication in a public place, which is not a criminal offence, he was not entitled to a phone call, nor a breathalyzer test. The Discipline Authority concluded there was no reasonable likelihood that further investigation would produce evidence of an ***abuse of authority*** *default and accordingly* ***summarily dismissed*** *the complaint.*

Comparison Statistics

Files Opened

	2003	2002[1]	2001	2000	1999	1998[2]
Abbotsford	20	17	21	12	34	7
Central Saanich	8	6	7	5	1	3
Delta	18	20	10	15	17	4
Esquimalt[3]	0	14	17	21	12	4
Nelson	6	8	4	5	6	4
New Westminster	27	19	15	15	24	8
Oak Bay	1	4	5	11	4	0
OCA[4]	0	N/A	N/A	N/A	N/A	N/A
Port Moody	5	2	3	4	2	1
Saanich	28	25	40	36	31	7
Stl'atl'imx[5]	0	2	1	2	N/A	N/A
Vancouver	237	204	148	173	198	84
Victoria[3]	96	77	73	73	87	20
West Vancouver	10	9	12	27	13	6
TOTAL:	**456**	**407**	**356**	**399**	**429**	**148**

Files Closed

	2003	2002[1]	2001	2000	1999	1998[2]
Abbotsford	17	16	17	38	13	6
Central Saanich	4	9	4	3	1	3
Delta	18	15	13	16	11	4
Esquimalt[3]	8	12	16	17	12	2
Nelson	9	3	6	6	8	0
New Westminster	17	16	20	15	21	5
Oak Bay	2	2	11	5	3	0
OCA[4]	0	N/A	N/A	N/A	N/A	N/A
Port Moody	2	3	2	3	3	0
Saanich	32	26	46	35	18	4
Stl'atl'imx[5]	0	3	2	0	N/A	N/A
Vancouver	145	197	132	202	156	46
Victoria[3]	101	68	73	77	53	18
West Vancouver	11	9	13	22	15	10
TOTAL:	**366**	**379**	**355**	**439**	**314**	**98**

1 Due to office transitions, there was no Annual Report completed for 2002

2 The OPCC came into existence on July 1, 1998. Figures for 1998 represent complaints opened or closed from July 1st to December 31st, 1998.

3 As of January 1st, 2003, Esquimalt Police Department was formally amalgamated with the Victoria Police Department

4 As of December 3rd, 2002, complaints regarding municipal members of the Organized Crime Agency (OCA) fall within the mandate of the OPCC.

5 As of December 1st, 1999, complaints regarding sworn members of the Stl'atl'imx Trial Police fall within the mandate of the OPCC

Files Opened in 2003 by Characterization

	Opened	*Public Trust*	*Internal Discipline*	*Service Policy*	*Compound*	*Non Lodged*	*Not Char.*
Abbotsford	**20**	15	0	2	0	1	2
Central Saanich	**8**	8	0	0	0	0	0
Delta	**18**	17	0	0	1	0	0
Nelson	**6**	5	0	0	0	0	1
New Westminster	**27**	21	2	1	1	0	2
Oak Bay	**1**	1	0	0	0	0	0
*Organized Crime Agency**	**0**	0	0	0	0	0	0
Port Moody	**5**	4	1	0	0	0	0
Saanich	**28**	20	6	1	1	0	0
Stl'atl'imx	**0**	0	0	0	0	0	0
Vancouver	**237**	208	0	4	3	10	12
Victoria	**96**	85	1	1	1	4	4
West Vancouver	**10**	9	1	0	0	0	0
TOTAL	**456**	393	11	9	7	15	21

Every complaint that is recorded on a Form One Record of Complaint is required by section 52.1(1) of the *Police Act* to be characterized as one of three types:

- Public Trust
- Internal Discipline
- Service or Policy

Compound complaints are complaints that have elements of one or more of the above.

Non-Lodged Complaints are letters of complaint where the complainant has chosen not to formally proceed under the *Police Act* by filing a Form One (or a Form One is pending)

Not Characterized refers to complaints that have not yet been characterized.

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1 As of December 3rd, 2002, complaints regarding municipal members of the Organized Crime Agency (OCA) fall within the mandate of the OPCC

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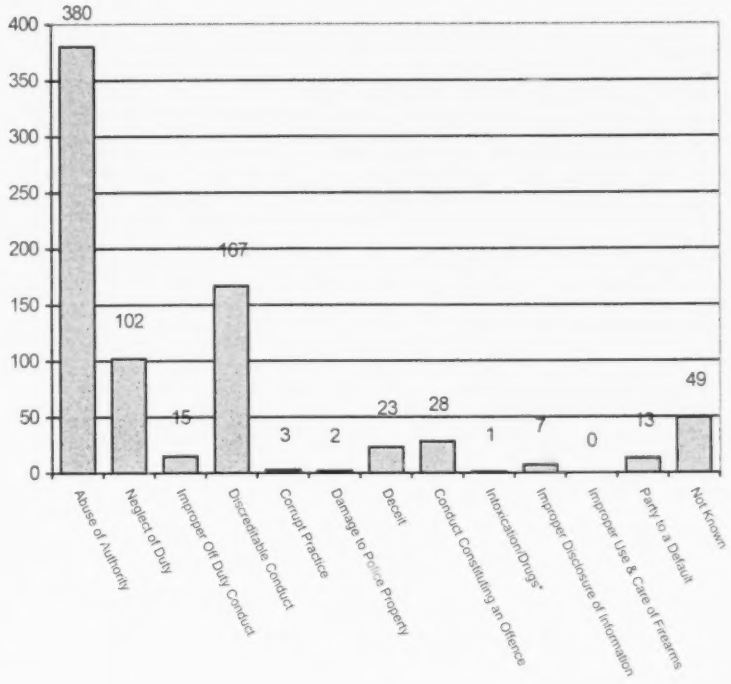
Complaints Opened in 2003 by Allegation



A complaint lodged against an officer may contain one or more allegations of a discipline default as defined by the *Code of Professional Conduct Regulations*, B.C. Reg. 205/98. The *Code* lists the following potential defaults:

- Discreditable conduct
- Neglect of duty
- Deceit
- Improper disclosure of information
- Corrupt practice
- Abuse of authority
- Improper use and care of firearms
- Damage to police property
- Misuse of intoxicating liquor or drugs in a manner prejudicial to duty
- Conduct constituting an offence
- Being a party to a disciplinary default
- Improper off-duty conduct

Disposition of Files Concluded in 2003

	A/W	*R&C*	*IR*	*SD*	*NS*	*Substantiated*		*Other*	***TOTAL***
						Corr/ Disc	*No Corr/Disc*		
Abbotsford	2	0	5	0	8	0	0	2	**17**
Central Saanich	0	0	0	3	0	1	0	0	**4**
Delta	1	0	0	6	8	3	0	0	**18**
Esquimalt[1]	0	0	0	4	2	2	0	0	**8**
Nelson	0	0	0	4	4	0	0	1	**9**
New Westminster	0	1	4	4	5	2	0	1	**17**
Oak Bay	0	0	1	0	1	0	0	0	**2**
OCA[2]	0	0	0	0	0	0	0	0	**0**
Port Moody	0	0	0	0	1	1	0	0	**2**
Saanich	0	0	1	4	13	10	4	0	**32**
Stl'atl'imx[3]	0	0	0	0	0	0	0	0	**0**
Vancouver	16	3	2	35	71	15	1	2	**145**
Victoria[1]	12	2	12	63	10	2	0	0	**101**
West Vancouver	1	0	3	1	3	2	0	1	**11**
TOTAL	**32**	**6**	**27**	**129**	**126**	**38**	**1**	**7**	**366**

A/W Abandoned / Withdrawn

R&C Reviewed & Closed – For Service and Policy complaints and for non-lodged complaints. Upon receipt of the final response by the police board or department, the OPCC reviews and closes the file.

IR Informal Resolution

SD Summarily Dismissed – The Discipline Authority can summarily dismiss a complaint if: there is no likelihood further investigation would produce evidence of a default; the incident occurred more than 12 months prior to filing the complaint; or the complaint is frivolous or vexatious.

NS Not Substantiated – Following an investigation, the Discipline Authority determines there is no evidence to support the allegation of a default.

Corr/ Disc Substantiated – Following an investigation, the Discipline Authority determined the complaint was substantiated and ordered corrective or disciplinary measures.

No c/m Substantiated – Following an investigation, the Discipline Authority determined the complaint was substantiated, but that corrective or disciplinary measures are not warranted.

Other OPCC has no jurisdiction; or Officers retired/resigned

1 As of December 3rd, 2002, complaints regarding municipal members of the Organized Crime Agency (OCA) fall within the mandate of the OPCC

2 As of December 1st, 1999, complaints regarding sworn members of the Stl'atl'imx Trial Police fall within the mandate of the OPCC

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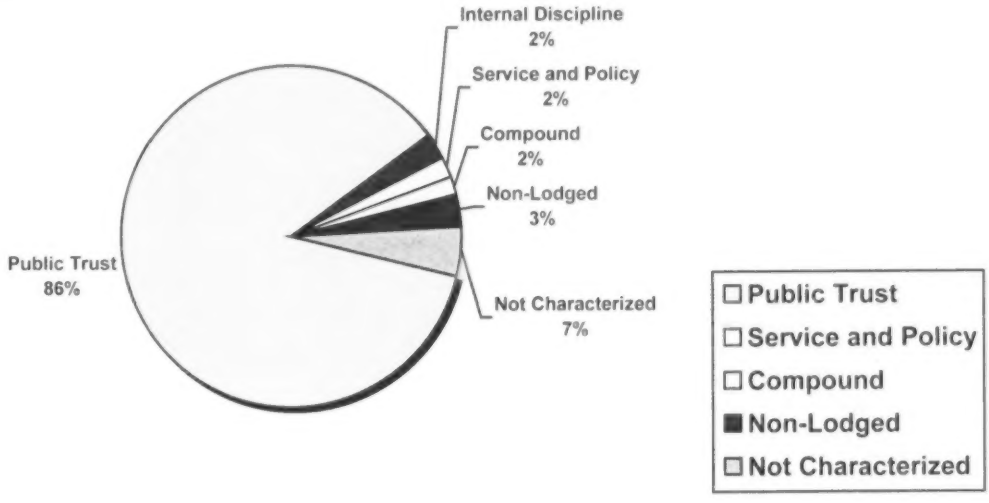
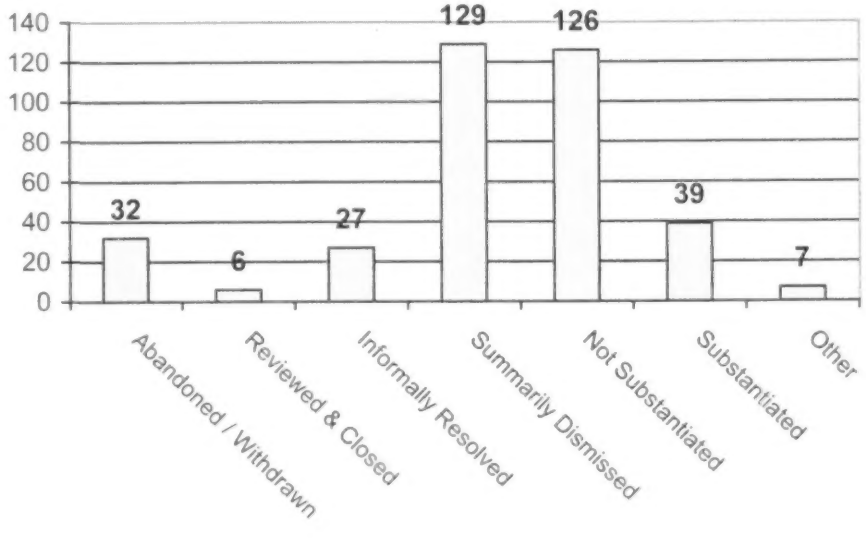
2003 Complaints by Comparison



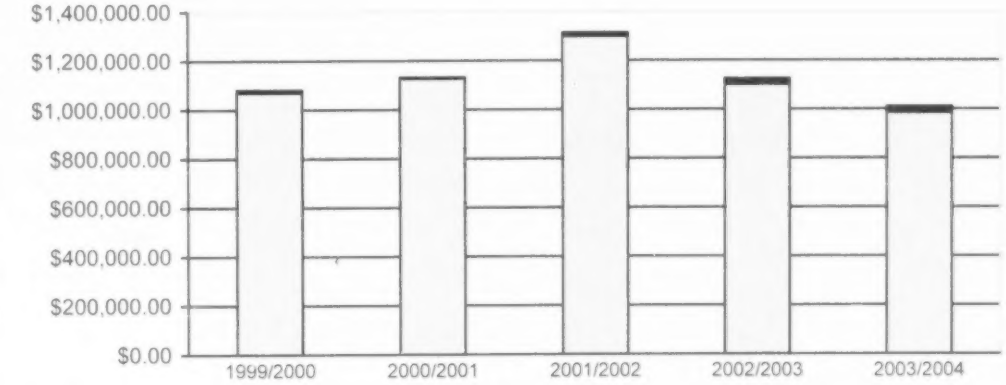


Budget

Fiscal Year ending March 31st, 2004

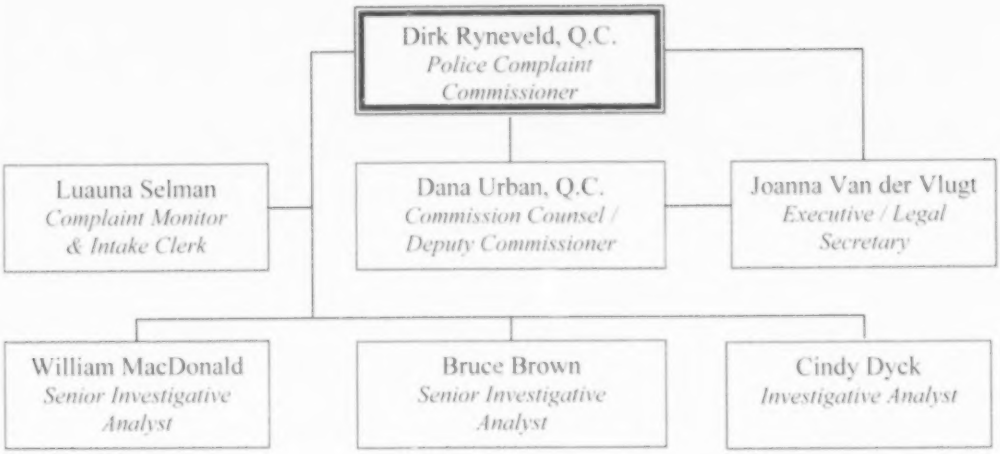
Number of Staff:	9 Allocated (6 employed)
Total Operating Budget:	$985,000.00
Total Capital Budget:	$ 25,000.00
TOTAL:	**$1,010,000.00**

Budgets 1999 to 2003



	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004
■ Capital Budget	$11,000.00	$6,000.00	$15,000.00	$25,000.00	$25,000.00
□ Operating Budget	$1,070,000.00	$1,127,000.00	$1,299,000.00	$1,101,000.00	$985,000.00
FTE's Allotted	6	9	11	11	9 (6 filled)

Organization Chart



List of Support Groups

Section 54.1(9) and (10) of the *Police Act* states:

> *(9) In the informal resolution process, a complainant may enlist the assistance of a support person of the complainant's choice or may ask the Police Complaint Commissioner to appoint a support person for the complainant.*
>
> *(10) A support person, enlisted or appointed under subsection (9), may*
>
> *(a) be present at any interview about the complaint and at any mediation or informal resolution session, and*
> *(b) participate at any of those sessions with the consent of the respondent*

Section 54.1(8) of the Act requires the Police Complaint Commissioner to provide a list of support groups to help complainants with the informal resolution process. The following agencies have agreed to be listed as support groups for this purpose. Complainants are not limited to this list in choosing a support group or person.

Inter-Cultural Association of Greater Victoria

930 Balmoral Road
Victoria, BC V8T 1A8
Website: www.icavictoria.org

Telephone: (250) 388-4728
Fax: (250) 386-4395

British Columbia Civil Liberties Association

425 – 815 West Hastings Street
Vancouver, BC V6C 1B4
Website: www.bccla.org

Telephone: (604) 687-2929

S.U.C.C.E.S.S.

28 West Pender Street
Vancouver, BC V6B 1R6

Telephone: (604) 408-7238

Vancouver Police and Native Liaison Society

324 Main Street
Vancouver, BC V6A 2T2

Telephone: (604) 687-8411
Fax: (604) 682-2967

Contact Names & Numbers

Office of the Police Complaint Commissioner:

Victoria Office
Third Floor, 756 Fort Street
PO Box 9895, Stn Prov Govt
Victoria, BC V8W 9T8
Tel: (250) 356-7458
Fax: (250) 356-6503
Website: *www.opcc.bc.ca*

Vancouver Office
320 – 1111 Melville Street
Vancouver, BC V6E 3V6
Tel: (604) 660-2385
Fax: (604) 660-1223

Toll free: Enquiry BC @ 1-800-663-7867

Municipal Police Agencies:

Abbotsford .....(604) 859-5225
Central Saanich .....(250) 652-4441
Delta.....(604) 946-4411
Nelson .....(250) 354-3919
New Westminster.....(604) 525-5411
Oak Bay .....(250) 592-2424
Organized Crime Agency .....(604) 777-7800
Port Moody .....(604) 461-3456
Saanich.....(250) 475-4321
Stl'atl'imx Tribal Police .....(250) 256-7784
Vancouver.....(604) 717-3535
Victoria .....(250) 995-7654
West Vancouver.....(604) 925-7300

Complaints against the RCMP in British Columbia should be directed to:

Commission for Public Complaints Against the RCMP
7337 – 137 Street, Suite 102
Surrey, BC V3W 1A4
Tel: (604) 501-4080
Fax: (604) 501-4095
Toll free: 1-800-665-6878